

GRAMA Notice of Appeal to State Records Committee

Note: Utah Code § [63G-2-403](#) (GRAMA) provides that any person may further appeal the chief administrative officer's denial of an appeal by filing a notice of appeal with the State Records Committee. This notice must be filed within 30 days of the response from a governmental entity's chief administrative officer or no later than 45 days after the records request was made if the following occur: the governmental entity claims extraordinary circumstances, and the chief administrative officer failed to make a determination.

Requester's information

Name: RILEY BOOKER C/O SCHATZ ANDERSON & ASSOC Date: 30 AUGUST 2019

Address: 1445 EAST 3300 SOUTH SALT LAKE CITY, UTAH 84106 City/State/Zip:

Daytime telephone number: 801-746-0447

Make request to

SRC Executive Secretary
346 South Rio Grande Street
Salt Lake City, Utah 84101
gproctor@utah.gov

Explanation of Relief Sought

Note: Relief can relate to conflicts over denial of access to records (Utah Code § [63G-2-402](#)) as well as disputes over fees (Utah Code § [63G-2-203\(6\)](#)) or extraordinary circumstances (Utah Code § [63G-2-402](#)).

The State Records Committee can also use the weighing provision to order the release of records that are properly restricted if it determines that the interests favoring access are greater than or equal to the interests favoring restriction (Utah Code § [63G-2-203\(11\)](#)).

SEE ATTACHED

Inclusions for notice of appeal

The State Records Committee requires documentation and has specific appeals procedures which are outlined in Administrative Rule: [Title R35. Administrative Services, Records Committee](#), and should be reviewed by a petitioner.

This petition to appeal to the State Records Committee requires the following attachments or inclusions:

- Statement of facts, reasons, and legal authority in support of this appeal
(see Utah Code § [63G-2-403\(3\)\(b\)](#)).
- Original GRAMA request
- Notice of denial from the governmental agency's records officer
- Notice of appeal to the governmental entity's chief administrative officer (Optional)
- Notice of decision from the governmental entity's chief administrative officer

This notice of appeal must, **on the same day**, also be forwarded to the governmental entity to which the records request was made (Utah Code § [63G-2-403\(3\)](#)).

- Notice of appeal sent to agency

Request assistance

A petitioner may request assistance from the government records ombudsman. The ombudsman's responsibility is to serve as a resource for a person who is filing an appeal relating to a records request. The ombudsman may also attempt to mediate disputes between requesters and responders (Utah Code § [63A-12-111\(2\)](#)).

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BEFORE THE UTAH STATE RECORDS COMMITTEE

<p>RILEY BOOKER</p> <p>Petitioner,</p> <p>v.</p> <p>DAVIS COUNTY</p> <p>Respondent.</p>	<p>PETITIONER’S STATEMENT OF FACTS AND LEGAL AUTHORITIES</p>
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On July 19, 2019, Jason Schatz attorney for the Petitioner Riley Booker requested certain records regarding Mr. Booker’s arrest. A notarized release signed by Mr. Booker accompanied the request. On July 26, 2019, Davis Conty Sheriff’s Office denied the requested video records citing 63G-2-106. An appeal was delivered to the chief administrative officer on July 30, 2019, The chief administrative officer responded August 13, 2019 that continued the denial under U.C.A. §63G-2-106. We now appeal that denial on behalf of Mr. Booker.

The Video Is a Public Record and Must Be Released

Mr. Booker by and through his attorney requested any video and audio from the booking / intoxilyzer area regarding Mr. Booker’s breath test. Mr. Booker was arrested by Utah Highway Patrol. He was given an evidentiary breath test at the Davis County Jail. Davis County denied this request stating , “Utah Code Annotated 63G-2-106 state that records of a governmental

entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter”

Mr. Booker did not request any of the information excluded by the statute. The statute states:

63G-2-106. Records of security measures.

The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:

- (1) security plans;
- (2) security codes and combinations, and passwords;
- (3) passes and keys;
- (4) security procedures; and
- (5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

Mr. Booker requested the video of him being administered the breath test by UHP. Nowhere in the request did he ask for any of the above listed items. Nor would the images captured contain any of that information.

Classification of Records

The agency has changed the classification of video pursuant to this request. This office has received the exact video requested on behalf of other clients. There is nothing in the video that disclosed any of the information listed in 63G-2-106. The area is the booking area where countless people are brought through every day. It is not an employee only area. It does not disclose any security plans, employee work schedules, nor any sensitive security information. While an agency may make a general classification to specific types of records, it may not make a blanket classification then apply that classification to all requests for that record type contrary

to GRAMA classifications. The classification given to a record by the GRAMA statute eclipses a contrary classification given by a government entity.

Police Video is a Public Record

U.C.A. § 63G-2-102 clearly states that the Legislative intent is to promote transparency. In the age of increased scrutiny of police officers it is counter to the legislative intent to restrict access to police activity in a location where police and the public interact every day.

U.C.A. § 63G-2-103(14)(a) defines an initial contact report as “an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law...” Subsection 301(3)(g) states that initial contact reports are public records. This video is created by a law enforcement agency, and documents the response and official action of a peace officer. It is subject to disclosure.

The Utah State Records Committee has addressed this issue twice regarding exclusion of security information. The most recent was seeking “records on all transportation departures and returns, dates and times, and policy regarding restraints” from the Utah Department of Correction.¹ Clearly transportation of inmates with times and restraint policies are included under the security exception. The other was seeking “[d]ate and time employee[s]... working at Heber Wells Building scans their security access card; entryway being accessed (parking garage, elevator or door); first and last name of employee; group name (or state agency with whom state worker is employed).”² Again, that request is clearly a security concern. Mr. Booker’s request did not seek any information remotely similar to the above cases. Mr. Booker’s request was seeking to gain video of the UHP trooper collecting evidence from Mr. Booker. It was not

¹ Richard Garcia v UDC 2015-13 05 (State Record Committee of the State of Utah, May 29, 2015);

² Lori Prichard/KSL v DFCM 2010-2 (State Record Committee of the State of Utah, Feb. 18, 2010);

seeking policy, procedures, names, security protocols, passwords, keys codes, or any information which could possibly put an individual at risk.

Similar video evidence has been previously disclosed. The county is now choosing to restrict the police video under the guise of security.

The Utah State Records Committee has addressed the police video issue several times. Each time the Committee has ruled that police video is a public record and must be released.³ Utah Courts have upheld the committee's decisions.⁴

The agency is attempting sidestep the legislative intent of “promot[ing] the public’s right of easy and reasonable access to unrestricted public records[.]”⁵ If they are now allowed to issue a blanket denial of similar video to what have previously been disclosed, the public’s rights and GRAMA law become meaningless.

Other Requested Records

In addition to the video, we requested and received the booking sheet, release form and a copy of the bail bond. The Davis County Sheriff’s office refused to acknowledge our request to preserve the evidence. The letter directed Mr. Booker to the Highway Patrol. It is common knowledge that the Highway Patrol would not have the video of the intoxilyzer area as the building and area are owned and controlled by Davis County.

Conclusion and Relief Sought

³ *Chris Vanocur/ABC 4 News v. Utah Department of Public Safety*, 2010-05 (State Record Committee of the State of Utah, Jan. 12, 2010); *Jessica Phillips v. West Jordan Police Department*, 14-04 (State Records Committee of the State of Utah, Mar. 28, 2014); *American Civil Liberties Union v. Salt Lake County District Attorney and the Salt Lake City Police Department*, 2017-02 (State Records Committee of the State of Utah, Jan. 24, 2017);

⁴ *Utah Department of Public Safety v. State Records Committee, et al.*, 100904439, Utah 3rd Dist. Jun. 17 2010) (upholding the Utah State Records Committee’s decision in *Vanocur*).

⁵ U.C.A. § 63G-2-102.

Davis County has incorrectly denied Mr. Booker's Request. The requested video is not a record of security measures and is a public record and must be released. I request the Committee order Davis County to release these records immediately.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Jorgensen', with a stylized flourish at the end.

Richard Jorgensen
Attorney